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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/026,728

12/21/2001

Pierre M. Crespo

625.001

1949

7590

04/29/2004

FERENCE & ASSOCIATES  
400 Broad Street  
Pittsburgh, PA 15143

EXAMINER

MULLEN, THOMAS J

ART UNIT

PAPER NUMBER

2632

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



## Office Action Summary

Application No.

10/026,728

Applicant(s)

CRESPO, PIERRE M.

Examiner

Thomas J. Mullen, Jr.

Art Unit

2632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 14, 16-18, 29, 31 and 32 is/are rejected.
- 7) ☒ Claim(s) 2-13, 15, 19-28 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4</u> . | 6) <input type="checkbox"/> Other: ____.  |



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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "means for providing a prompt" (see claims 4, 12, 14, 20, 26 and 29) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. Claims 3 and 16-17 are objected to under 37 CFR 1.75(a) for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3, line 3, "said breathalyzer" lacks antecedent basis (note claim 10).

Claims 16-17, "said photographic apparatus" (1 occurrence in each claim) lacks clear antecedent basis (note claim 6).

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 14 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 14 and 29, "the prompt corresponds to the provision of a breath sample" is unclear as to whether the prompt occurs before, during or after the breath sample (i.e., whether the prompt is for telling a person to give the breath sample, or the prompt is responsive to the occurrence of a breath sample to either indicate the result of the sample or tell the person to perform another task, etc).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –



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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 16-18 and 31-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuller (US 4916435, cited by applicant).

Note in Fuller '435, detection device (breath alcohol tester) 50 and photographic unit (telecommunications camera) 42. Detection device 50 "ascertain(s) the degree to which an individual is affected by a controlled substance", in this case alcohol. Photographic unit 42 includes a "breath flow responsive camera actuating means" for taking a picture of the tested person responsive to a breath sample, i.e. the picture-taking "can be initiated only in response to delivering a breath sample into breath tester 50" (see col. 4, lines 20-23 and col. 10, lines 9-11); therefore, the photographic unit 42 is inherently operable "responsive to" the detection device and/or ascertaining step, as claimed. Further, since the photographic unit 42 is "responsive to" the detection device and/or ascertaining step, it will inherently "facilitate(s) photographic identification of an individual tested by said detection device who is affected by a controlled substance beyond a predetermined threshold level", as claimed; i.e., the photographic unit 42 provides photo identification whether the individual is "affected" or not "affected".

Regarding claims 16-17 and 31-32, the telecommunications camera 42 appears to be of the "digital" type, note col. 8, line 66 to col. 9, line 8; and Fuller '435 further teaches that "video imaging" may be used (col. 18, lines 22-26).

7. Claims 2-15 and 19-30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, and/or objection(s) under 37 CFR 1.75(a) set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The art cited by applicant is made of record. Weiss (US 6433863) and Padgitt et al (US 3842345) are cited to further show the state of the art.




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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mullen, Jr. whose telephone number is 703-305-4382. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (703) 308-6730. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

TJM

  
Thomas J. Mullen, Jr.  
Primary Examiner  
Art Unit 2632